

you're absolutely right. There is a temporary measure to deal with those matters in Launceston, and we are working hard to try and remedy that as soon as we can. I'll throw briefly to Ms Wilson to see if she give you any further clarifications there.

Ms Wilson: Thank you, David. As David Pringle said, we have been in long, ongoing discussions, including with the senior officials at the Tasmanian Department of Justice. Before November 2021, we had utilisation, when we circuit to Burnie, of the Burnie Court Complex. The reason that changed around December 2021 and onwards is that at that time in Burnie there were, I understand, some more magistrates appointed, and also there was a Supreme Court judge who was the first resident judge to be based in Burnie. That led us to have to look for new premises. We understand there is a new court complex that will be built in Burnie, and we are in talks about the potential for that to have room to also accommodate our courts. But as you can understand, while I know there has been work on the site for that, the actual building of that will take time.

In the meantime, since 2021 we have worked with the Tasmania department on alternative accommodation in Burnie, and we did secure and work in the arts centre. As you can imagine, we had to look at: could they accommodate us, and would there be sufficient security? Things were put in place. That all went well until April this year, when, as you noted, we found out that centre was going to be under renovation. That then led us to have to look at alternative premises. So we have been in constant discussion with the Tasmanian department, and I can tell you we have gone through pretty much every premise in Burnie as to its potential. Unfortunately, we have only recently, as of this week, confirmed that, of those that we've looked at, there weren't any that were going to be suitable. There are a few about which we still have ongoing discussions.

As Mr Pringle alluded to, it comes back to the difficulties. When we're circuiting, we are reliant on state and territory premises, so in a location like Burnie, where there may be limited suitable premises, that can cause difficulties. So there are ongoing discussions. Up until now, I think there have been up to eight circuits that our judge did there over the past year. I think the notification that you're referring to just means that the upcoming one in June will be done from Launceston.

Senator COLBECK: So at this point there's really no available resolution to the provision of services in Burnie, except for an arrangement being made at the current premises, at Burnie court, with the Tasmanian Department of Justice?

Ms Wilson: That is correct—subject to another location that we can find that is suitable.

Senator COLBECK: A long-term solution, similarly, depended on an arrangement with the new courthouse that has been proposed for Burnie.

Ms Wilson: That is correct.

Senator COLBECK: Is there any support available for people who have to travel from Burnie and surrounds and the west? It's an hour and a half to Launceston from Burnie, but if you're coming from Queenstown it's another two hours. Is there any support available for people who have to travel that distance to have their matters heard?

Ms Wilson: In terms of support from the court, we look at, as we would, the potential for remote hearings, virtual hearings, and appearances for those who can't travel. We appreciate that distance can be, as you've mentioned, an obstacle. Broadly, beyond that, for us, as I said, it's about looking at every option we can to secure premises in Burnie that we can circuit to, because we appreciate that not only in Burnie but, as Mr Pringle said, in all our circuit locations there are obstacles for people in regional and rural locations who have to travel to get to court locations.

Senator COLBECK: Thank you.

CHAIR: I think those are all the questions we have for you this evening, so thank you very much. I now call officers from the Federal Court of Australia.

Federal Court of Australia

[16:28]

CHAIR: Hello and welcome, Ms Lagos. Do you have an opening statement?

Ms Lagos: No, I do not. I am expecting some colleagues to arrive, but I'm more than happy to proceed.

CHAIR: I'm sure you'll be able to answer all the questions that we have.

Ms Lagos: Absolutely.

CHAIR: Senator Shoebridge, you have the call.

Senator SHOEBRIDGE: Just to assist, I might hand up two documents. One is supplementary budget estimates questions and answers, and the other is some communication from the Australian Public Service Commission. I don't think the first one needs to be tendered, but I think we should reserve position on tendering the second for the moment.

CHAIR: Thanks for the heads up.

Senator SHOEBRIDGE: I think I have another copy.

CHAIR: Okay. So are you saying that I've got one document that can be tabled? Is it a question on notice?

Senator SHOEBRIDGE: I don't think we need to table it. It's just for easy reference. Could I take you to the answers that you provided. I think those questions were asked on 28 February 2023. These were questions about a recruitment process that the Federal—

Ms Lagos: Sorry I've only been handed, I think, the correspondence that you referred to but not the questions on notice. I probably have a copy for myself if you allow me to quickly—

Senator SHOEBRIDGE: Can I just have a quick look at that to check the formatting is the same as my one that I've kept. Are you familiar with this issue?

Ms Lagos: Yes, I am.

Senator SHOEBRIDGE: Ms Lagos, one of the questions that I asked of your court was:

What steps have been taken within the court to address matters investigated by the Australian Public Service Commission regarding promotions and appointments?

Do you see that?

Ms Lagos: Yes, I do.

Senator SHOEBRIDGE: This is in relation to two appointments of registrars in circumstances where one of those appointed registrars never had legal qualifications. Do you remember that?

Ms Lagos: They had completed a law degree. They hadn't been admitted to practice.

Senator SHOEBRIDGE: Yes, they did not have the requisite legal qualifications, did not have a practising certificate and therefore were not eligible to be appointed as a registrar. That's the first one. Do you cavil in any way with that description?

Ms Lagos: I would prefer to contextualise the issue. The role that that particular person had applied for in 2016 was what we call a NCF registrar. They were newly created roles to support the court in a very significant reform exercise, particularly the National Operations Registrar and the national operations registry, in the allocation and workload of new matters to the court to support the workload of the judges. One of the requisites was in fact that the person was admitted as a solicitor to practice. That, unfortunately, was a criterion that was inadvertently overlooked in the selection exercise.

Senator SHOEBRIDGE: It was, as you would expect, an essential criterion to be appointed as a registrar, to preside over courts and to undertake the role of a registrar. It was as obvious as anybody could imagine that it was an essential requirement that they be admitted as a practitioner of the High Court or the supreme court of a state or territory of Australia.

Ms Lagos: If I could contextualise a bit further, I think it might assist. There are various categories of the registrar role. There are the entry-level roles that we used to call the NCF registrar and now call the national registrar. Unless you take an oath or affirmation and are sworn in as a registrar, you do not in fact exercise judge delegated power. This role was there to support a triaging of matters that were filed in the court and to support the allocation of the work across the judges nationally.

Senator SHOEBRIDGE: We will go through in more detail the findings of the Australian Public Service Commission in relation to what the court did for that appointment, but a fair summary of it—a non-contentious summary of it—is that the advertised position and the position description had as an essential role requirement that of being admitted as a practitioner of the High Court or the supreme court of a state or territory of Australia, and the successful applicant did not have such qualifications.

Ms Lagos: That was an absolute finding by the Public Service Commission, and it's accepted that that was the single finding of public interest disclosure following their investigation out of 10 recruitment exercises.

Senator SHOEBRIDGE: We will come to your description in your answers about what the findings and recommendations were and what action has been taken in due course, Registrar; we don't need to get ahead of ourselves. The second recruitment, in which at least one recommendation was made by the Australian Public Service Commission, was a recruitment of another registrar, again where the mandatory requirement was that

same qualification. At the time of the application, at the time of signing the contract and the acceptance of the contract, that successful applicant did not have the requisite qualifications but obtained the requisite qualifications a matter of days prior to commencement. Is that right?

Ms Lagos: That's correct.

Senator SHOEBRIDGE: We might call the first successful applicant Ms A and the second successful applicant Mr B. Would that work?

Ms Lagos: I appreciate that. Yes, it does work.

Senator SHOEBRIDGE: When I asked you about what steps had been taken to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments, you said:

The Federal Court has fully complied with all recommendations from the APSC, which related to a single appointment, by:

- providing staff of the Federal Court with refresher guidance and/or training about the APS Employment Principles prior to undertaking any recruitment action ...

I'm assuming that that is a reference to recommendation A, on the last page of that correspondence from the Australian Public Service Commission.

Ms Lagos: Yes, it is.

Senator SHOEBRIDGE: I go back to your answer. The second point is:

- having relevant Federal Court staff familiarise themselves with the APS Code of Conduct, and in particular paragraph 12(11)(a) of the Public Service Act 1999 (Cth), which states, relevantly, that employees must at all times behave in a way that upholds the APS Employment Principles.

Again, I'm assuming that that is a reference, in this case to recommendation B on that last page. Is that right?

Ms Lagos: Yes, it is.

Senator SHOEBRIDGE: You then say:

No further issues were identified by the Australian Public Service Commission regarding recruitment conducted by the Federal Court.

Do you see that?

Ms Lagos: Yes, I do.

Senator SHOEBRIDGE: It's not true, is it?

Ms Lagos: It's probably a difficult representation of the balance of the correspondence. I think that's your concerns, if I could say so. It was directly referable to the findings of disclosure by the Public Service Commission, so it was narrow in its scope and in its consideration. The additional matters that I assume you are referring to were notations by the Public Service Commissioner in respect of best practice and other things. They weren't referable to the recruitment exercise that was the foundational issue of the non-disclosure investigation.

Senator SHOEBRIDGE: That's not true either, is it?

Ms Lagos: In what way? I'm sorry; I think I need to appreciate where it is you're saying—

Senator SHOEBRIDGE: I'm going to give you again a chance to respond to my earlier question to you and see if you want to give a more frank answer. I put it to you that, where you said, in answer to the question on notice—sorry; before we do that, I must say I'm assuming you were the author of these answers.

Ms Lagos: General Counsel, who has been delayed, was the author, and I was forwarded the responses.

Senator SHOEBRIDGE: Did you approve of them?

Ms Lagos: I said they were suitable, yes.

Senator SHOEBRIDGE: Alright. I'm giving you a chance to reflect upon your answer when I put to this proposition that I will repeat. In answer to the question, you said:

No further issues were identified by the Australian Public Service Commission regarding recruitment conducted by the Federal Court.

That was plainly untrue, wasn't it?

Ms Lagos: There was absolutely no intention to state anything—sorry; I will introduce Scott Tredwell, General Counsel of the Federal Court.

Senator SHOEBRIDGE: I wasn't asking you about intention. The statement was plainly untrue.

Ms Lagos: It was absolutely not intended that we would make an untrue statement. We were very constrained with correspondence that the Public Service Commissioner had specifically asked us to maintain confidentiality

on, having regard to what this issue was about. This was a comprehensive investigation undertaken by the Australian Public Service Commission into 10 recruitment exercises, and all documents were faithfully provided at their request to investigate those matters. We were very mindful of what we should be communicating and not communicating. There was absolutely no intention to misrepresent the issues that were the basis of your question. Our failure may have been taking a very narrow view of the question and limiting the premise of the question to the findings by the Public Service Commissioner, which were the findings referable to the single issue in which there was a failing.

Senator SHOEBRIDGE: You understand, don't you, that, whatever your concerns about confidentiality were, they did not permit you to directly mislead this parliament in the answers you gave to questions on notice? They didn't permit you to mislead parliament, did they?

Ms Lagos: There was categorically no intention to mislead. There was no reason to mislead the parliament. The other referable issues that could have been incorporated were issues to do with role classification and more effective communication in relation to those matters. They were not referable to the specific finding of the single instance of the omission that the Public Service Commissioner found.

Senator SHOEBRIDGE: The question asked of you was:

What steps have been taken within the Court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?

That is plural. Your answers now are being deliberately deceptive, I would suggest—

CHAIR: Senator Shoebridge.

Senator SHOEBRIDGE: Sorry; I withdraw that. Your answers now are impermissibly seeking to limit your response to just one recruitment action when that was not the question asked of you and the court, was it?

Ms Lagos: I apologise if it isn't clear. My colleague here is trying to draw my attention, but there was absolutely no intention to mislead in the answer to that question. I will ask Mr Treadwell to extrapolate.

Mr Treadwell: I will clarify: in respect of the APSC investigation, there were, overall, four recommendations. Three of those related singular appointment, so the appointment of a single person. Now, the third of those was simply a reiteration of the second recommendation, which was in the response we provided to the question on notice, but in the APSC report there were two categories of recommendation made: those relating to single appointments and those relating overall to role reviews and restructures. When we provided our response, we provided our response in terms of promotion and appointments, which were about the recruitment exercise. There was no intention to mislead parliament. The question related to promotions and appointments which were part of the recruitment part. The fourth recommendation, on restructuring, simply didn't fall within the aspects of that question. So there was no attention to mislead, nor was there—

Senator SHOEBRIDGE: You are, perhaps inadvertently, getting ahead of yourself by making reference to the second misleading answer that was provided to parliament. I'm asking about the first misleading answer provided to parliament, which is the one on page 1 of the response.

CHAIR: You might want to reflect on the use of the word 'misleading'.

Senator SHOEBRIDGE: Inaccurate.

CHAIR: I think that's a better use of language, and you might want to withdraw that insinuation.

Senator SHOEBRIDGE: Chair, I want to be clear: I see no way of characterising these answers other than as misleading and untruthful, and I'm giving the witnesses the ability to respond to that. I will take them through and give them the chance to contest that characterisation in the course of this exchange.

Senator Chisholm: Senator Shoebridge, the chair asked you to reflect, which I encourage you to do. This isn't the format here today for you to make that point. You do have other opportunities to do that if you wish to.

Senator SHOEBRIDGE: Perhaps, rather than seek to characterise them, we'll take you through the content of the questions and the responses. Would that assist?

CHAIR: That would assist. I think it's the characterisation in the question that's of concern, not the questions being put.

Senator SHOEBRIDGE: I understand.

Senator SCARR: It will assist me too, Senator Shoebridge, as I get up to speed with this.

Senator SHOEBRIDGE: To return to your answer on page 1, after referencing the two recommendations that I took you to, (a) and (b), on the last page of the APSC correspondence, you then said:

No further issues were identified by the Australian Public Service Commission regarding recruitment conducted by the Federal Court.

Do you see that?

Ms Lagos: Yes.

Senator SHOEBRIDGE: If we look at page 4, the last page of the correspondence from the Australian Public Service Commission, after those two recommendations, the APSC said this:

While I did not make any adverse findings concerning the engagement of (the man)—

Mr B—

as a matter of best practice it may have been advisable for the selection panel to more explicitly record the reason for shortlisting, interviewing and selecting such a candidate.

That's an issue, isn't it, that has been identified by the APSC? It is a very real issue?

Ms Lagos: We took a narrow view, unfortunately. There was absolutely no intention to be restrictive in that assessment, because we made it referable in order to respond to the issue of the finding and didn't turn our mind to the broader issue. There is nothing controversial in those issues. They are all about the Public Service Commission making recommendations about our recruitment practice and notations.

Senator SHOEBRIDGE: This would be simpler if you answer my question. That's an issue that was raised by the Australian Public Service Commission, isn't it? Sorry, Chair—could I ask for clarification about the role of the general counsel here? He's not permitted to be here in the capacity of a legal adviser for Ms Lagos. What is Mr Tredwell's position?

Ms Lagos: No, his role is within the court as part of principal registry. He deals with questions on notice and performs not as my legal adviser—

CHAIR: If it assists, Mr Tredwell, if you have information to add to an answer, you can simply do that at the end of the answer being given. You're sitting in front of a microphone for a reason, so you don't need to go through the chief executive. Although I'm sure you're trying to assist her, you can just provide the answer, and then we might get through this a bit quicker.

Ms Lagos: The notion, as I understand it, was that, because it was part of the same recommendation, we thought it was enveloped in the same recommendation. But, once again, I can assure you there was absolutely no intention to not make reference to that issue.

Senator SHOEBRIDGE: See, Ms Lagos, I thought your earlier evidence was that recommendations (a) and (b), which I took you to, were about the instance where there was an adverse finding relating to the recruitment of Ms A.

Ms Lagos: Yes.

Senator SHOEBRIDGE: You now say that the reference that I've just taken you to, which was in relation to Mr B, you understood to also be referable to those recommendations. Those two statements are clearly inconsistent. You can't have it both ways.

Ms Lagos: No, because they relate to the provision of the actual recommendations made by the Public Service Commission, which are: providing staff with refresher guidance and training about APS employment principles prior to any recruitment action being taken; and having the relevant staff familiarise themselves with the code of conduct.

Senator SHOEBRIDGE: Recommendations (a) and (b) were about the proven failure of the court in relation to the recruitment of Ms A. I have just taken you to the first of the additional comments made in relation to the recruitment of Mr B. You cannot say consistently that they are the same thing and they were covered by the first part of your answer. It is simply not logically consistent.

Ms Lagos: No. I'm sorry if we're speaking at cross-purposes. What I was referring to was the reiteration of what was outlined above—

Senator SHOEBRIDGE: I haven't taken you to that yet. We are talking about the express reference to the engagement of Mr B. It's an issue, isn't it? And it's an issue that you failed to tell parliament about. In fact, it's an issue that you, whether inadvertently or not, misled the parliament about when you said that no further issues were identified by the Public Service Commission. That answer was untrue.

Ms Lagos: We were answering the question:

What steps have been taken within the court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?

We were advising in the response that we had implemented the recommendations of the Australian Public Service Commission following their investigation in relation to that one single transgression.

Senator SHOEBRIDGE: Ms Lagos, you gratuitously went further than that by saying:

No further issues were identified by the Australian Public Service Commission regarding recruitment conducted by the Federal Court.

It was a false response.

Ms Lagos: It was not intended to be a false response.

Senator SHOEBRIDGE: I'm not asking about your intention; I'm asking about the fact. It was factually false, wasn't it?

Mr Tredwell: If I might assist at this point in time, the APSC made one adverse finding in respect of this recruitment exercise, and then, as you're discussing now, on another recruitment exercise it raised the notion of, as you say—

... as a matter of best practice it may have been advisable for the selection panel to more explicitly record the reason for shortlisting, interviewing and selecting such a candidate.

So it has provided advice as to how the court can achieve best practice. It hasn't raised an issue in respect of the recruitment itself.

Senator SHOEBRIDGE: Mr Tredwell, you know why the APSC made that recommendation. It was because there was no explanation from any of the documents how you could possibly recruit somebody who had only been admitted as a legal practitioner less than a week before the appointment to the position of national registrar. That's why they made the recommendation—because nowhere in any of the recruitment material was it made clear how that could possibly be done.

Mr Tredwell: Actually, in answer to your question, I don't know that that's why that recommendation was made. That appears nowhere in the reasons provided by the APSC.

Senator SHOEBRIDGE: It's a fact, isn't it? It was a core part of the complaint that you appointed a registrar who was a baby lawyer—who had been admitted for days and indeed, at the time the contract was signed, wasn't even admitted—and there was no explanation for it, and you then had to limit the delegations and the work that they could do because they didn't have the experience.

Ms Lagos: I think I need to make it absolutely clear what the registrars of the court are and the various levels of them. As I started to allude to earlier, there are four levels of registrar role that have been organised within the court. The entry-level role used to be called an NCF registrar and became a national registrar role. Those roles, predominantly, are there to support in assisting registrars and in undertaking the function of assessing cases when they come in and assisting in the allocation process. They are roles undertaken with a degree of supervision by more senior people. The next levels of registrars are the judicial registrars and the national judicial registrars, and we also have senior national judicial registrars. Those are the registrars that perform judge-delegated functions, go through an extensive induction and training exercise and take an oath or affirmation to be able to perform those functions in accordance with the chief justice's directions and their delegated power. So the roles that we are referring to here are, in essence, legal administrative roles. They are roles that support case analysis and assessment. They are not roles in which decisions of a registrar pursuant to judge-delegated powers are made.

Senator SHOEBRIDGE: Ms Lagos, I find it incredible that you are suggesting that in circumstances where an essential criterion in the position description and the advertisement for a registrar was that they be admitted as a legal practitioner and where a decision was made to recruit somebody who had been admitted only for days, over a series of candidates with extensive history of being admitted, capable legal practitioners, no explanation or reference was required in the paperwork for that decision. I find it remarkable that you're insisting upon that as being a reasonable practice. Can you not understand how the Australian Public Service Commission was disturbed by it and referenced it as I put to you?

Ms Lagos: The commissioner certainly highlighted an improvement in being able to identify that issue and those issues going forward but made no adverse finding in relation to the prospective admission of that particular candidate, who you referred to as candidate B.

Senator SHOEBRIDGE: Despite being asked to tell us what you'd done in response to the Australian Public Service Commission's investigation, you chose not to tell the parliament and indeed to mislead the parliament by saying no other issues were raised.

Senator Chisholm: Senator Shoebridge, the chair asked you to reflect on the type of language that you're using. You've just gone and said it again. You do have other opportunities if you want to pursue that. This isn't the

place for you to be using that language. No-one has a problem with your line of questioning, but I think you need to reflect on some of your language and the tone from time to time.

Senator SHOEBRIDGE: Ms Lagos, delete 'mislead' and replace it with 'misdirect'. Your answer misdirected the parliament, didn't it?

Ms Lagos: I can assure you, Senator, there was absolutely no endeavour here to misdirect the parliament. It was a question that was posed, and the recommendations that were implemented were articulated. If it has given you that concern, I can refute categorically that there was any such intention.

Senator SHOEBRIDGE: Let's go to your next answer. The question you were asked is:

What steps have been taken within the Court specifically relating to the appointment of registrars to address matters investigated by the Australian Public Service Commission?

Do you see that?

Ms Lagos: Yes.

Senator SHOEBRIDGE: You say:

There are no particular steps being taken by the Court specifically relating to the appointment of Registrars to address the matters investigated by the APSC, nor did the APSC make any recommendations requiring such steps.

Do you see that?

Ms Lagos: Yes.

Senator SHOEBRIDGE: Were you seeking to suggest that, because the APSC's recommendations weren't expressly limited to registrars, that answer was accurate?

Ms Lagos: Yes, because the recommendations were referable to all recruitment practices.

Senator SHOEBRIDGE: You then say:

The Federal Court has fully complied with all recommendations from the APSC by:

It says 'form', but I think it's meant to be 'from'. Then, I won't repeat it, but there are the same two dot points that I read out earlier. Do you see that?

Ms Lagos: Yes.

Senator SHOEBRIDGE: You agree, I assume, consistent with your answers earlier, that that is a reference to the two recommendations (a) and (b) that I previously took you to?

Ms Lagos: Yes.

Senator SHOEBRIDGE: Why did you not reference the third recommendation?

Mr Tredwell: The third recommendation by the APSC is actually a reiteration of the second dot point. The APSC stated that, in terms of best practice, you could improve the note-taking—

Senator SHOEBRIDGE: Sorry, just—

Mr Tredwell: and then it says, 'This is why I reiterate my recommendation,' which was the reiteration of the second dot point.

Senator SHOEBRIDGE: I'm happy to characterise my question as 'adopt the four recommendations' that you referred to, if that's easier—if that will make it consistent. I understand your argument about the so-called third recommendation. I will rephrase my question to make it clearer. Why did you make no reference to this additional provision and recommendation from the Australian Public Service Commissioner? I'll read it onto the record:

Additionally, while I did not make any adverse findings in relation to the other recruitment processes undertaken by the FCA—

Federal Court of Australia—

I note that more clear and transparent communications from the FCA about the role review process, including the changing nature of the National Judicial Registrar role to allow it to be held either at a Legal 2 or SESB1 position level, may have been advisable to reduce the risk of misunderstanding in relation to those roles.

It then goes on to say:

I have therefore recommended that future FCA role reviews or restructuring exercises are communicated to staff in a transparent and clear way to reduce the risk of misunderstanding and/or misinformation.

Why did you choose to make no reference to that additional recommendation?

Mr Tredwell: In your question, you asked:

What steps have been taken within the court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?

Recommendation 4 from the APSC addresses role reviews and restructures. It doesn't actually address—

Senator SHOEBRIDGE: A matter investigated—

Mr Tredwell: the appointment of registrars. So, as the court hadn't taken any action in respect of registrars, other than complying with the recommendations of the APSC, that didn't seem to capture any other statements within the APSC report that the Federal Court could comply with.

Senator SHOEBRIDGE: Mr Tredwell, even assuming that somewhat specious response—which, I might say, I reject—you expressly said that the Federal Court has fully complied with all recommendations from the APSC. You said four, and that is plainly—plainly—not true. You have failed, for reasons I cannot comprehend—

Mr Tredwell: No, Senator.

Senator SHOEBRIDGE: to give a full and frank answer to this—

CHAIR: Senator Shoebridge—

Mr Tredwell: Senator, you have asked whether we complied. Essentially, we have complied with all the recommendations relating to the appointment of registrars to address matters investigated by the Australian Public Service Commission. We've addressed the question. The fact that you've asked that question steers our answer.

Senator SHOEBRIDGE: Mr Tredwell, the recommendation was that future FCA role reviews or restructuring exercises be communicated to staff in a transparent and clear way to reduce the risk of misunderstanding and/or misinformation. Clearly, that would relate to any of that action in relation to registrars or other staff, wouldn't it?

Ms Lagos: But it related to role restructuring, and maybe we've taken such a literal view of the issues here, Senator, that—

Senator SHOEBRIDGE: When you said 'all recommendations', yes.

Ms Lagos: No, because this was related to the appointment of registrars, as opposed to role restructurings and reviews. Maybe we've been a bit legalistic in our view here in terms of how we've read the question and answered it quite specifically. But, once again, can I assure you that there was no detriment and no difficulty in us adding further information—except to say this: the correspondence received from the Public Service Commissioner made it very explicit that the communication was to be kept confidential and only communicated on a need-to-know basis. Maybe we were being overly careful in what we extracted, and limited the scope of the information provided. There was no further intention to be restrictive, other than dealing with a very specific question and providing a very specific answer.

Senator SHOEBRIDGE: You then say in relation to the fourth question you were asked—'Has there been external oversight of recruitment given the significant probity issues raised?'—that the APSC, following its extensive investigation, found only a single incident of noncompliance and the single incidence of noncompliance resulted from an inadvertent omission by a selection panel. Where did the APSC ever make any reference to it being an inadvertent omission?

Mr Tredwell: We were providing what we thought was assistance to you in answering your question.

Senator SHOEBRIDGE: The Public Service Commission never made any reference to 'inadvertent'. It made no finding of inadvertence.

CHAIR: That is not what the question stated. The two sentences are separate.

Ms Lagos: We did not state that that was a finding. It just contextualised our response as to why we believe this has happened. This was a process undertaken in 2016 to recruit an entry-level registrar role to support significant reforms that were being undertaken by the court. It was guided by an HR process. The panel's focus was on the substantive criteria around skills and attributes to perform that key role, which were case analysis and to be able to communicate effectively. This was clearly an oversight and an omission, hence the finding by the Public Service Commission. We accepted the finding fully and accepted the recommendations fully. We have revised our recruitment practices. We have ensured that the recommendations have been implemented, that selection panels are appropriately briefed, that the APSC guidelines in relation to employment are adhered to and that there is training in relation to the code of conduct and the like.

This goes back to 2016, Senator Shoebridge, and you're trying to correlate it to an outcome of an investigation in 2020. Ten substantial recruitment exercises have been reviewed by the Public Service Commissioner, with one single finding of one requirement in a position description of the most junior registrar role being overlooked. We

deeply regret it, but it was something that was an oversight, an omission. We deeply regret that having occurred. We have remedied that by adopting all the recommendations that the Public Service Commissioner made.

Senator SHOEBRIDGE: These were both internal recruitments, weren't they? Two internal recruits were preferred over a raft of external candidates. That's what happened. Correct?

Ms Lagos: I could not tell you who the applicants were or go back to that exercise in 2016—

Senator SHOEBRIDGE: They were both internal recruitments.

Ms Lagos: You are talking about seven years ago.

Senator SHOEBRIDGE: They were both internal recruitments.

Ms Lagos: The people appointed? The person A and the person B you referred to?

Senator SHOEBRIDGE: Correct.

Ms Lagos: One worked in the registry—

Senator SHOEBRIDGE: Yes.

CHAIR: Senator Shoebridge, I have been allowing you time because I thought it would not take us this amount of time. Senator Scarr, has some questions, so I am going to share the call with him.

Senator SCARR: Registrar and General Counsel, I'm looking at this with a fresh set of eyes. There are a few things that immediately leap out to me and which have led to the questions I am going to ask you. The first is that, when I look at the answer, which Senator Shoebridge has been walking you through, and I look at the letter from the Australian Public Service Commission, there is a section entitled 'recommendations'. That section goes all the way down to 'next steps'. I have read it all. I find it difficult to understand why, just as a matter of culture—I don't want to get into legal definitions of different phrases et cetera—you wouldn't have just taken the high-level view that the question asked from a senator on this committee of all committees was seeking substantively, as a matter of substance over form, all of the information which was contained under 'recommendations' before 'next steps' and then just deal with that in the body of the answer. I'm struggling to understand why you didn't adopt that more—

CHAIR: Because they were asked to keep it confidential.

Senator SCARR: I'll come to that, Chair. You've made that point. I will come to that.

CHAIR: Well, they've answered that question.

Mr Tredwell: I'm happy to answer that, Senator. I'll take it right back to the APSC investigation. That investigation was conducted as an investigation into a complaint under the Public Interest Disclosure Act, The Public Interest Disclosure Act, as you know, has all sorts of protections in terms of confidentiality, and they're designed to protect the person making the complaint as well as anybody who's involved in that complaint process or the scope of that investigation. When we were asked specific questions in respect of registrar recruitment which related to particular recommendations, as we saw it, we didn't feel—and to go back to your point about why we didn't just put all the recommendations out, list them out and say, 'Yes, we've complied with them all—

Senator SCARR: You can understand how, at first blush, that would appear to be the obvious thing you might do.

Mr Tredwell: Yes. We take our obligations under the Public Interest Disclosure Act very seriously, and to go further than somebody's question of us would have been, essentially, providing information in respect of a public interest disclosure investigation that we'd been asked to keep confidential and that met our obligations under the act.

Ms Lagos: There's a paragraph in the correspondence in which we are reminded of our obligations under the PID Act, that it's an offence for us to take reprisal action or make any disclosure under the PID Act, and:

Given ... the sensitive nature of PID investigations, I would therefore appreciate your ongoing discretion in responding to this investigation, and ask that this correspondence, and all information relating to this PID investigation, is treated on a confidential and need-to-know basis ...

We were heightened in our sense of obligation arising from that, and we have been very heightened about these matters because of that condition. There have been matters that have been communicated in the media about these issues. Registrars have had confidential information in respect of their selection processes and private information in relation to their applications uploaded on a website. It has caused huge distress, and we have been very constrained in taking any action in relation to that because we have taken that obligation so seriously. That's because of who we are. We are the Federal Court of Australia. I mean, this is an institution that understands these

things, and maybe that's our failing—that we have taken it too far in ensuring that we are so protective that we've just sat here and restricted our ability to say and do anything, because of our concerns.

Senator SCARR: I'll ask one follow-up question in relation to that particular issue, before I move on to my second issue—and I've only got two issues in relation to this that are of doubt to me. I was admitted as a lawyer in 1992, so I've got some experience in terms of dealing with registrars' processes. My only follow-up question in relation to this first point is this. I can understand firstly how you would be very sensitive in relation to the disclosure, and I respect that and take it on face value. But it seems to me that that sensitivity would have been most acute, if I can put it that way, with respect to the identities of the applicants. Obviously, that is particularly sensitive. When I look at the two paragraphs that follow (a) and (b) it seems to me that they are no more sensitive than (a) and (b), in some respects. Was there any particular confidential sensitivity you saw in relation to those two paragraphs, noting that one sentence—the introductory words in one of the paragraphs—identifies an applicant? I think you could have included the substance of that without including the applicant's name. The next paragraph doesn't include an applicant's name. Did you give any consideration in that regard? Do you understand the point I'm making?

Ms Lagos: I do understand the point. It's probably because the paragraph was prefaced with one of the names and referable to that we may have been overly sensitive about that. It also was encompassed in one of the recommendations when the commissioner reiterates a recommendation. Maybe we have been a bit legalistic in our approach.

Senator SCARR: You wouldn't be the first person to come before this committee who adopted that approach. I acknowledge that, Registrar.

Ms Lagos: That's probably a bit too legalistic in how we approached the questions and the answers.

Senator SCARR: We're all lawyers.

Ms Lagos: We had no intention to do anything beyond that.

Senator SCARR: I'll take that on face value.

Ms Lagos: Thank you.

CHAIR: Some of us, but not others.

Ms Lagos: Some of us are a bit too lawyerly.

Senator SCARR: I come to my second point, which is the more substantive point. Again I'm listening to this evidence afresh. You made a comment about the nature of the triaging role. I struggle to understand how you would in a competitive application process choose to appoint to a position that involves the triage of court applications, necessarily making assessments with respect to how those matters should be allocated and the importance of them—and I don't know who else applied for this position—someone who has never been a practising lawyer? I would have thought the experience of practising law would necessarily deepen one's capacity to make decisions regarding how to triage matters—and that's using the words you used—in connection with the role. Could you respond to that observation?

Ms Lagos: Absolutely. These roles are not the decision-makers. The decision-maker was a recommendation by the national operations registrar. That essentially was a recommendation to the Chief Justice or under the authority of the Chief Justice. These particular roles were to receive applications and write case summaries—basically extract case summaries—and that's why their legal skills and their capacity to write succinctly, clearly and analytically were key parts of the role. They didn't then go and say, 'I am the decision-maker.' They are not. They would write the drafts—the drafts would be prepared. Those matters would then be referred to other roles, whether it was an appeal matter, a first-instance matter or the like. All of that would be collated and processed under the authority of the Chief Justice and others as was necessary.

Senator SCARR: So this is a role, in your opinion, that would be suitable for an entry-level—

Ms Lagos: It's an entry-level role.

Senator SCARR: first-year lawyer—

Ms Lagos: Absolutely—

Senator SCARR: or a first-year articulated clerk?

Ms Lagos: an entry-level role.

Senator SCARR: That's how you saw it?

Ms Lagos: Because an experienced practising lawyer would actually struggle to be limited in that way. Do you know what—

Senator SCARR: I can well and truly appreciate that.

CHAIR: So you thought there were people who were overqualified?

Ms Lagos: In a sense. The role is quite restricted in its nature. You receive the applications, you extract a summary—

CHAIR: Sorry, I shouldn't ask you about that. The APSC had an investigation and made recommendations.

Senator SCARR: I'm happy to leave it there, Chair.

CHAIR: I don't think Senator Shoebridge is happy to leave it there.

Senator SHOEBRIDGE: Ms Lagos, you say it's a role suitable for a very junior solicitor, someone appointed for just days and you say it's administrative. They were your answers to Senator Scarr.

Ms Lagos: It requires legal skills to be able to synthesise and collate information and be able to characterise it so that decisions could be made regarding the allocation of matters. They also did analysis of workload—where there was supply and demand, and what urgent matters needed to be dealt with, and would escalate those matters.

Senator SHOEBRIDGE: Ms Lagos, less than three weeks after the appointment was made the Chief Justice gave Mr B an extraordinary amount of delegated, effectively judicial power. I'll just read the power that this baby lawyer was given, no doubt on your recommendation, by the Chief Justice less than three weeks after the appointment:

- the power to dispense with the service of any process of the Court;
- the power to make orders in relation to substituted service;
- the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to proceedings in the Court or of any other person;
- the power to make orders in relation to interrogatories;
- the power, in proceedings in the Court, to make an order adjourning the hearing of the proceedings;
- the power to make an order as to costs ...
- the power to make an order exempting a party to proceedings in the Court from compliance with a provision of the Rules of Court;

How is it possibly reasonable to delegate those extensive powers to somebody who had been admitted as a legal practitioner for just days?

Mr Tredwell: Senator, I can take that question if you like. Essentially, the direction instrument that you've read out there—those directions are made by the Chief Justice, and they're made for every registrar who enters the court. Now, just because the direction and those delegations are made does not mean that those registrars are free to exercise those, and the court has internal controls which determine which registrars are exercising what powers. So, whilst there's that possibility within that direction instrument for those delegations to be exercised, those decision-making processes don't actually get in front of those—I know they've been called junior registrars here—entry-level positions. They're an EL1 position. The EL1 position didn't exist prior to the 2016-2018 recruitment campaign. That followed on from a recommendation brought to the court in terms of how it restructured, and whilst those directions were made, those registrars did not exercise those delegations, nor were they put into a position whereby they might consider a need to exercise those delegations.

Ms Lagos: I would also like to add some additional matters here, Senator. Before any registrar exercises those judge-delegated powers, we make sure that they are properly inducted and trained. This induction and training is undertaken under the supervision of the senior national judicial registrars of the court, who are the most senior registrars we have. They are inducted and trained in relation to policies and practices. They have sessions in relation to any of their work—again, limited to the levels at which they operate. Any registrar, before they undertake any mediation for either the Federal Circuit and Family Court or the Federal Court must be an accredited mediator, so we ensure that they undertake a one-week external mediation course or come in as an accredited mediator. We conduct moot practices to make sure that the peer group creates a moot practice to make sure that they fully understand the nature of the matters that they will be dealing with. They shadow senior registrars to ensure that they understand all of their key functions and practices as a registrar. These entry-level roles are there essentially to take the simplest part of registrar work, under the complete mentoring and supervision of the more senior registrars, so those senior registrars, which we call judicial registrars—hence the terminology—are freed up to do the more complicated work.

Senator SHOEBRIDGE: Because of the time, I'm going to ask you three questions that I'll ask you to take on notice and provide a full response to. The first question is this: was His Honour the Chief Justice advised that Mr

B had been admitted as a legal practitioner for less than a month at the time the Chief Justice granted him that suite of extensive delegated powers? That's my first question. Will you take that notice?

Ms Lagos: Yes, Senator.

Senator SHOEBRIDGE: My second question is: when was the first occasion that Mr B exercised any of those delegated powers that were granted to him on 27 February 2019? Will you take that question on notice?

Ms Lagos: Yes.

Senator SHOEBRIDGE: My third question is: for how long had the other applicants who sought this same position been appointed as legal practitioners, so far as you can answer that based upon the material they provided to you in their applications? Will you take that on notice?

Mr Tredwell: In respect of that question, are you asking us to divulge the personal information of each and every applicant for that position?

Senator SHOEBRIDGE: I am asking you to tell the parliament in a de-identified way the length of time that each of the other applicants had been admitted as practitioners in a list form. Will you take that on notice?

Ms Lagos: In a de-identified way, I think we can do that.

Senator SHOEBRIDGE: Do you not understand how damaging it is to the reputation of the court for the court to appoint one registrar who never had been admitted as a legal practitioner and to appoint another registrar who had been admitted only for days, and to do it without any explanation in the recruitment materials? Given the importance of these roles, do you not understand how damaging that is to the reputation of the court?

Ms Lagos: I can say this: that the role and the reputation and the performance of the registrars are at the highest possible level is a deeply held investment by the court. These were matters that occurred a long time ago at a point in time with the HR practice that was current at the time. The court has taken these matters seriously once this investigation was undertaken by the Australian Public Service Commission. But can I say this: the reputation, the authority and the standing of the registrars of the Federal Court are fundamental, and the people that have been caught up in this are under enormous distress with the things that are being said in relation to their performance in their roles.

Senator SHOEBRIDGE: Ms Lagos, in answering my questions, if the answer to my first question about whether or not the Chief Justice was informed of the matter is no, can you also please provide an explanation of why you think it is a reasonable action of the court to not inform the Chief Justice of that matter?

CHAIR: Of course, Senator Shoebridge will have the opportunity to provide you further questions on notice, and I am sure they will be drafted very carefully.

Senator SHOEBRIDGE: Will you take that last question on notice?

Ms Lagos: Yes.

Senator SHOEBRIDGE: For completeness, I'll hand up and table the direction of the Chief Justice of 27 February 2019.

CHAIR: That's the end of the questions we have for you. Thank you for your attendance.

Commonwealth Director of Public Prosecutions

[17:28]

CHAIR: I welcome officers from the Commonwealth Director of Public Prosecutions. Do you have an opening statement before we begin?

Mr Bruckard: No, Chair.

CHAIR: Thank you. Senator Scarr, you have the call.

Senator SCARR: Acting Director, I asked a question of the then director of CDPP in relation to quite a high-profile case that had been briefed by the ACCC to the CDPP in relation to anti-competitive conduct in a capital raising, where a number of members of different financial institutions were the subject of criminal prosecution, and that case was abandoned. The judge, at the time, made a number of quite direct remarks with respect to the case—and with respect to the law, I think—in relation to the matter. I had queries as to whether or not the CDPP was going to reflect in relation to the management of that case and the decision that was made to proceed to court with that case. The then CDPP, the Commonwealth Director of Public Prosecutions, said that was a matter which would be the subject of some internal reflection. I'm interested to know what steps have been taken within the Commonwealth Director of Public Prosecutions to reflect on that case, which took a long time. The reputations of quite a number of people hung in the balance for that period. They've made comments in the media with respect